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May 30, 2006

VIA HAND-DELIVERY

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 06-29
Petition of the Commonwealth of Massachusetts Office of the Inspector General
Requesting Advisory Ruling by the Department Pursuant to 220 CMR §2.08(1)

Dear Secretary Cottrell:

In response to the Notice of Filing and Request for Comments issued by the Department of Telecommunications and Energy ("Department") on April 13, 2006, we hereby submit these comments on behalf of the Municipal Electric Association of Massachusetts, Inc. ("MEAM").

MEAM is a non-profit association whose members are Massachusetts municipal light departments. MEAM urges the Department to decline to act on the Petition of the Office of the Inspector General of the Commonwealth of Massachusetts ("Inspector General"), or in the alternative, to deny the Petition

A. The Petition

By letter dated March 13, 2006 the Inspector General requested "an advisory opinion specific to municipal light department reporting requirements". *Letter of Gregory W. Sullivan to Judith F. Judson* dated March 13, 2006 at page 1 ("Petition"). Specifically, the Petition requests the Department to issue the following advisory opinion:

Any Corporation subject to M.G.L. c. 164 §3¹, shall cooperate with the municipal auditor, accountant, or treasurer of the city or town in which that Corporation is located and, specifically, shall provide to that auditor, accountant or treasurer all documentation requested by

¹ A municipal light department is not a corporation subject to G.L. c. 164 §3. G.L. c. 164 §3 applies only to investor owned electric companies. G.L. c. 164, § 2

the auditor, accountant, or treasurer in the discharge of his or her responsibilities under M.G.L. c. 164 §56. The auditor, accountant or treasurer shall not be required to provide any justification for any request, except that it is made pursuant to M.G.L. c. 164 §56.

Petition at 1-2.

The Petition requests the Department to construe G.L. c. 164 §56 to require municipal light departments to provide to a city or town auditor, accountant or treasurer “all documentation requested by that auditor, accountant or treasurer...[without] any justification for any request”. According to the Petition, such a statutory construction is “a matter of simple prudence mandated by the language of the statute” *Petition* at 5-6.

In addition, the Petition states that the Inspector General is requesting this advisory opinion “to prevent and discourage the types of unsound business requirements described in [the Inspector General’s] December 2005 report, An Investigation of the Use of Certain Bond Funds by the North Attleborough Electric Department (“Bond Fund Report”)”. *Petition* at 1. According to the Petition, “the Bond Fund Report concludes that the North Attleborough Electric Department (“NAED”) management misspent \$4,000,000 in bond funds on an unauthorized internet venture.” *Petition* at 2. The Petition states that the Inspector General “has identified similar problems” in five other municipalities but provides no description or detail of any kind whatsoever with respect to this claim². *Id.*

B. Advisory Opinions

General Laws, Chapter 30A, §8 authorizes agencies like the Department to issue advisory rulings. Section 8 states:

On the request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property, or state of facts of any statute or regulation enforced or administered by that agency. In issuing the advisory ruling the agency need not comply with the requirements of this chapter with respect to regulations.

This statute authorizes a state administrative agency to give informal advice to persons regarding the legal effect and impact upon them of the statutes and regulations administered or enforced by the agency. Cella, *Administrative Law and Practice*, 38 M.P.S. §427 (1986 and 2006 Suppl.). Significantly, the statute recognizes that no procedural constraints may be imposed upon “an informal process by which thousands of informal rulings are made each year by state administrative agency officials over the telephone, by mail, and in informal conversations”. *Id.* Accordingly in issuing an advisory ruling, an agency need not comply with

² The Petition makes it appear that what happened in North Attleborough also happened in Marblehead. That is not the case. See Affidavit of Robert V. Jolly, filed herewith. Further, the Petition states that “similar problems” occurred in other municipal light plants as well, when in fact, the Inspector General’s own published public reports clearly indicate that allegations were made by his office that did not relate in any way to misspent bond funds.

the requirements governing the adoption, amendment and the repeal of regulations. G.L. c.30A, §8 (second sentence).

Because an advisory ruling is informal, it has inherent limitations. First, although G.L. c. 30A §8 authorizes an agency to render an advisory ruling, it does not require it to do so. *Cella, Id.* An agency may, in its sole discretion, decline to issue an advisory ruling. Second, neither an informal advisory ruling, nor an agency's refusal to render one, is subject to judicial review. *Id.* An informal advisory ruling is not a regulation or an adjudicatory proceeding under c. 30A. Accordingly, there is nothing in c. 30A that provides for judicial review of an advisory ruling. Third, there is nothing in c. 30A or the case law that indicates the extent to which, if at all, the recipient of an informal advisory ruling is entitled to reply upon such a ruling in the conduct of its affairs. *Id.*

C. The Department's Regulation

The Department adopted 220 C.M.R. §208 regarding advisory rulings. Section 208 provides:

(1) Any interested person or his attorney may at any time request an advisory ruling with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the Department. The request shall be addressed to the Department and sent to the Secretary by mail or delivered in person during normal business hours. All requests shall be signed by the person making it or his attorney, contain his address or the address of his attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views, or arguments. If the Commission determines that an advisory ruling will not be rendered, the Department shall within ten (10) days thereafter notify the petitioner that the request is denied. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney.

(2) The Department may notify any person that an advisory ruling has been requested and may receive and consider arguments, views, or data from persons other than the person requesting the ruling.

The Department's regulation reflects c. 30A, §8. It provides that any interested person may request an opinion from the Department of the legal effect upon that person of statutes and regulations administered or enforced by the Department. The regulation expressly provides that the Department may, in its discretion, determine not to issue an advisory ruling. Also, given the informal nature of an advisory ruling, the regulation provides that the Department may request and consider views and arguments from persons other than the petitioner.

D. The Department Should Decline to Render An Advisory Opinion

In its sole discretion, the Department may decline to issue an advisory ruling. 220 C.M.R. 2.08(1). For the following reasons, the Department should exercise that discretion and decline to render an advisory opinion on the Petition.

G.L. c. 30A, §8 and 220 C.M.R. §2.08 permit an interested person to seek an advisory ruling regarding the applicability of a statute or regulation administered or enforced by the Department. The Petition seeks an advisory ruling regarding G.L. c. 165, §56. However, it does not request advice about the applicability of G.L. c. 164, §56 to a municipal lighting department, or about the Department's administration or enforcement of §56. Instead, the Petition seeks a ruling regarding the relationship between a municipal light department and the city or town auditor, accountant and treasurer. The legal relationship between a municipal light plant department and these public officials is neither administered, nor enforced, nor subject to interpretation by the Department. Further, the relationship is not the subject of any Department regulation.

Accordingly, the Petition is outside the scope of the Department's authority under G.L. c. 30A, §8 and 220 C.M.R. 2.08, does not concern a matter under the Department's jurisdiction, and therefore, the Department should not entertain it.

1. G.L. c. 164, §56

G.L. c. 164 §56 provides for the management of a municipal light department³. It states in part:

The mayor of a city, or the selectmen or municipal light board, if any, of a town acquiring a gas or electric plant, shall appoint a manager of municipal lighting who shall, under the direction and control of the mayor, selectmen or municipal light board, if any, and subject to this chapter, shall have full charge of the operation and management of the plant, the manufacturing and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity, and quality of the supply, the collection of bills, and the keeping of accounts.

Section 56 vests full and exclusive charge of the operation and management of a municipal light department in the manager with the manager subject to the direction and control of the municipal light board. *Municipal Light Commission of Peabody v. City of Peabody*, 348 Mass. 266, 273 (1964); *Whiting v. Mayor of Holyoke*, 272 Mass. 116, 119 (1930). If there is no municipal light board, the manager is subject to the direction and control of the mayor in a city or the selectmen in a town. G.L. c. 164 §56. Under §56 the manager has full charge of, among other things, the "keeping of accounts" *Id.*

³ G.L. c. 164 §56 is reproduced in the appendix.

Two sentences in §56 refer to the Department. First, §56 requires the manager, at the end of each year to render to “the mayor, selectmen or municipal light board, if any, ... such detailed statement of his doings and of the business and financial matters in his charge *as the department shall prescribe*.” G.L. c. 164, §56 (emphasis added). Second, Section 56 requires the manager, “at any time, *when required by the* mayor, selectmen, municipal light board, if any, or *department*, make a statement to such officers of his doings, business, receipts, disbursements, balances, and of the indebtedness of the town in his department” *Id.*

Section 56 requires the manager to provide a detailed statement annually to the municipal light board regarding the light department’s operations and finances. It also requires the manager upon request at any time to make a statement to the municipal light board or the Department regarding the light department’s books and records.

2. G.L. c. 164, §63

Section 56 must be read in conjunction with G.L. c. 164, §63⁴. Section 63 requires a municipal light department to keep records of its operations and finances at the municipal light plant. These records are to be kept in a form prescribed by the Department. Specifically, §63 states in part:

The books, accounts and returns shall be made and kept in a form prescribed by the department, and the accounts shall be closed annually on the last day of the fiscal year of such town, and a balance sheet of that date shall be taken therefrom and included in the return to the department. The mayor, selectmen or municipal light board and manager shall, at any time, on request, submit said books and accounts to the inspection of the department and furnish any statement or information required by it relative to the condition, management and operation of said business.

Section 63 requires a municipal light department to keep its books, accounts and records in a form prescribed by the Department. Pursuant to its authority under Section 63, the Department has promulgated a uniform system of accounts for municipal light departments. *Uniform System of Accounts for Gas and Electric Companies and Municipal Lighting Plants*, D.P.U. 4240-A (September 7, 1970). Further, Section 63 requires the manager and the municipal light board to make the light department’s books and records available for inspection by the Department, and to provide the Department with any information required by the Department relative to the management and operation of the municipal light department.

Section 63 also requires a municipal light department to file an annual return with the Department. It states, in part:

The mayor, or selectmen or municipal light board, if any, shall annually, on or before such date as the department fixes, make a return to the department, for the

⁴ G.L. c. 164, §63 is reproduced in the appendix.

preceding fiscal year, signed and sworn to by the mayor, or a majority of the selectmen or municipal light board, if any, and by the manager, stating the financial condition of said business, the amount of authorized and existing indebtedness, a statement of income and expenses in such detail as the department may require, and a list of its salaried officers and the salary paid to each. The mayor, selectmen, or the municipal light board may direct any additional returns to be made at such time and in such detail as he or they may order.

Under §63 a municipal light department must file an annual return with the Department, signed and sworn to by the manager and the municipal light board. Additionally, §63 requires the light department to make, at the time of the annual return, any additional returns the “mayor, selectmen or the municipal light board may direct”. There is no reference to the city or town auditor, accountant or treasurer in §63.

3. Discussion

When read in conjunction with G.L. c. 164, §63 it is clear that the references to the Department in G.L. c. 164, §56 refer to the Department’s regulatory authority over the books and records of a municipal light department under §63. The Department administers and enforces the provisions of §63 with regard to a municipal light department’s books, accounts and returns. That administration and enforcement is reflected in the language of §56. However, the Department’s regulatory authority derives from §63, not §56.

The Petition does not seek advice about the accounts and records that the Department has prescribed for a municipal light department. It does not seek advice about the provision of those accounts and records to the mayor, the selectmen, the municipal light board or the Department. Instead, the Petition asks the Department to rule that a municipal light department must furnish any “documentation requested by the auditor, accountant, or treasurer in the discharge of his or her responsibilities under M.G.L. c. 164, §56”.

The Petition is directed to the responsibilities of the auditor, accountant and treasurer under §56 rather than something pertaining to the submission of books and the like to the Department. The role and responsibilities of the auditor, accountant and treasurer are outside the scope of the Department’s regulatory authority. There is nothing in Section 56 that authorizes or requires the Department to direct or monitor the relationship between a municipal light department and local municipal officials or to interpret the administration of laws pertaining to such. The Petition is outside the scope of matters administered or enforced by the Department under §56. Accordingly, the Department should decline to issue an advisory opinion.

Additionally, even if the Petition concerned a matter administered or enforced by the Department, an informal advisory opinion would not be an appropriate means of resolving the issues raised by the Petition. “The duty of statutory interpretation is for the courts” *Op. Atty Gen.*, July 9, 1970, p. 32, citing *Cleary v. Cardullo’s, Inc.*, 347 Mass. 337, 344 (1964). An agency charged with the administration of an ambiguous statute may, at least in the first instance, interpret details not spelled out in that statute, when an interpretation is necessary to facilitate the agency’s administration. *Id.* However, the “appropriate manner to interpret ambiguous

language is by regulation rather than less formal means". *Id.* Therefore, even assuming the Petition were directed to some issue within the preview of the Department, which it is not, an advisory ruling is not an appropriate means to resolve that issue. Moreover, because there is no adjudicatory proceeding under G.L. c. 30A, §8, an advisory opinion does not preclude an action for declaratory relief from a court. See *Metropolitan District Police Relief Association v. Commissioner of Insurance*, 347 Mass. 686, 689 (1964). Therefore, an advisory opinion would not resolve finally the legal questions raised by the Petition.

E. The Requested Advisory Opinion Conflicts with c. 164, §56

The requested advisory opinion would require the Department to construe c. 164, §56 in a manner which is inconsistent with the statutory scheme established by §56.

1. Authority of the Manager and Municipal Light Board. The fiscal operation of a municipal light department is governed by G.L. c. 164 and not by the statutory procedures applicable to other town departments. *Municipal Light Commission of Peabody v. City of Peabody*, 348 Mass. 266, 271 (1964); *Middleborough v. Middleborough Gas and Electric Department*, 422 Mass. 583, 586-587 (1996). "The general intention of c. 44 that municipal finances be carefully regulated and be uniform is served, as to municipal light boards, by the provisions of c. 164 placing such boards under the control of the Department". *Peabody*, 348 Mass. at 271.

A municipal light department determines its own budget. Unlike other municipal departments, its budget is not voted on by the voters of the town, nor approved by the town. Significantly, a municipal light department does not depend upon appropriation of the town, as do other town departments. *Middleborough* 422 Mass. at 586-587⁵.

The manager has broad authority to determine what should be expended for the efficient operation of a municipal light department. The manager's determination is not subject to change by other public officers. *Municipal Light Commission of Peabody*, 348 Mass. at 268. See *Rockhill Iron and Coal Company v. City of Taunton*, 273 F. Supp. 96, 100 (1st Cir. 1921).

This statutory scheme provides for each municipal light department to be operated like a commercial business by a manager under the local control of the municipal light board. See *Municipal Light Commission of Peabody*, 349 Mass. at 267. These statutes vest a municipal light department with, *inter alia*, "broad discretion to expend money" *Bertrone v. Department of Public Utilities*, 411 Mass. 536, 542-43 (1992). In enacting Section 56 the Legislature clearly intended to limit, if not preempt, municipal government control over light departments and the case law demonstrates this

⁵ A municipal light department's revenues come from its ratepayers, whereas the town's revenues come from its citizens. The ratepayers pay for electricity on the basis of usage. The town's taxpayers pay taxes on the basis of property value. *Id.* at 587-588.

In *Peabody*, the court held that §56 places the management of a municipal light department in the "unrestricted power [of] the manager and the [board]. There is in [section 56] an implication that their determination as to what should be expended for the efficient operation of the business is not subject to change by other public officers or the legislative department." *Id.* at 268 citing *Municipal Light Commission of Taunton v. Taunton*, 232 Mass. 79 (1948). The court stated that the mayor and city have no restrictive powers over the business operations and finances of a municipal light department. *Id.* at 270. See also *Golubek v Westfield Gas & Electric Light Board*, 32 Mass. App. Ct. 954, 955 (1992) ("Charter provision cannot alter the statutory power of the manager...").

2. Role of other public officials. In contrast to the manager and the municipal light board, other municipal officials have a limited, almost ministerial, role in the operation of a municipal light department.

Selectmen. As described in §56, "the selectmen in towns shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer . . ." *Id.* (emphasis added). Under the express language of §56 the selectmen must approve the payment of the municipal light department's bills. The selectmen may, however, require any person presenting a bill to attest under oath as to the bill's accuracy. *Id.* In addition the selectmen may inspect all "accounts rendered to or kept in the gas or electric plant". *Id.*

The selectmen may "refuse to approve payment, in whole or in part" of any bill, but only if it is fraudulent, unlawful, or excessive. G.L. c. 164, §56. In such an instance, the selectmen are required to file "with the town treasurer a written statement of the reasons for the refusal . . ." *Id.*

Thus, while the selectmen have authority in the management of a town's operations, they have an limited role in regard to a municipal light department.

Auditors. In cities, the auditor (or an officer having similar duties) performs the same function as the selectmen in towns with respect to the approval of bills before the treasurer pays them. G.L. c. 164, §56. Like the selectmen, the city auditor must approve all bills, unless such bills are fraudulent, unlawful or excessive, in which case the auditor must file with the treasurer a written statement setting forth the reasons for not approving the bill. Also like the selectmen in towns, the auditor in cities may inspect the accounts kept in the electric plant. *Id.*

Accountants. Under G.L. c. 41, §56, town accountants have the same responsibilities and duties as selectmen. That is, a town accountant must approve for payment light department bills unless such bills fall in the same set of circumstances of being fraudulent, unlawful, or excessive. *Id.* Like the selectmen, the accountant must also set forth in writing the reasons for any refusal to pay a bill. *Id.*

Beyond the specific ministerial duty to approve bills for payment, town accountants play no role in the operation of light departments.

Treasurer. Section 56 requires that all money received in connection with the operation of a municipal light department be paid over to the town treasurer. However, these funds do not qualify as revenues of the town. These funds are directly due to the commercial operation of the municipal light department and cannot be appropriated for any purpose other than to pay for the operation of the municipal light department. See G L. c. 164, §57. The treasurer's authorization to use light department funds for the expenses of the light department may be made on a vote of the selectmen on a budget submitted by the manager. *Municipal Light Commission of Peabody*, 348 Mass. at 272.

3. Discussion. The operation and management of a municipal light department is vested in the manager, subject to the provisions of c. 164. The role of the town or city accountant, auditor and treasurer relative to a municipal department is very limited. The Petition states that the powers conferred to a town accountant under G L. c. 41, § 56 are not abridged by G.L. c. 164, §56. Yet the Petition fails to explain to the ministerial nature of those unabridged powers Chapter 41, §56 states:

The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be.... The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen.... The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

Although the payment of bills and payrolls of the light department is subject to the prior approval of the town accountant, the nature or exercise of that power must be consistent with the very restricted role that Chapter 164 permits the municipality to play in the affairs of the light department. See e.g., *Taunton*, 323 Mass. at 84. Town or city officials may not make independent evaluations of the necessity or wisdom of any payments by municipal light departments or in any way exercise a business judgment with respect to such payments. See *Municipal Light Comm'n of Peabody*, *supra*. Any other interpretation would render the decisions in *Taunton* and *Peabody*, and the authority conferred by G L. c. 164, § 56 upon a municipal light board and manager, a nullity.

Under this statutory framework, the function of the town accountant and city auditor is limited to evaluating a request for payment for evidence of fraud or illegality. They are not authorized to mandate procedures for payment more stringent than the statute provides.

The accountant in towns and the auditor in cities must approve all bills before the treasurer pays them. The only time an accountant or auditor may disallow and refuse to pay a bill is when the accountant or auditor determines the bill is “fraudulent, unlawful, or excessive”. G.L. c. 164, §56. This responsibility does not imply, as the Petition suggests, that the accountant or auditor has the unlimited authority to demand any and all documentation, at any time, and without justification.

With respect to the “fraudulent” claims, §56 provides:

The auditor or officer having similar duties, or the selectmen, may “require any person presenting for settlement an account or claim against the plant to make oath, before him or her, in such form as he or they may prescribe, as to the accuracy of such account or claim. The willful making of a false oath shall be punishable as perjury.

Thus, with respect to the determination of whether a particular bill is fraudulent, an auditor or accountant has the ability under §56 to require an oath from the party seeking payment. Moreover, a false oath is punishable as perjury. Therefore, auditors and accountants have sufficient authority and tools within the statute to prevent fraudulent claims. They do not need the type of blanket authority sought by the Petition to demand documentation from the light department to prevent fraudulent claims.

With respect to the determination of “unlawful” claims, the auditor or accountant need only determine whether the bill represents an “expense of plant”. G.L. c. 164, §57 (“The income from sales . . . shall be used to pay the annual expense of plant . . .”). In most instances, an auditor or accountant should be able to determine whether a bill relates to an expense of plant simply by examining the bill. In those instances when such a determination cannot be made from the bill itself, the auditor or treasurer could contact the manager and request clarification or back-up information that the bill in fact relates to an expense of plant. If the information is not forthcoming, or does not satisfy the concern of the auditor or accountant, the auditor or accountant would not sign off on the bill, and under §56 the treasurer could not pay it. However, there is no need for an auditor or accountant to have access to any and all documentation, without justification, to carry out his or her responsibilities, as suggested by the Petition.

A similar analysis applies to the disallowance of “excessive claims”. An auditor or accountant should be able to determine whether a bill is excessive by comparing the bill to other information available to the auditor or accountant, including previous bills for similar expenses. In those instances where the auditor or accountant has a legitimate concern that the bill is excessive, the auditor or treasurer could contact the manager and request clarification or back-up information for that particular bill. Again, it is not necessary to the limited role of the auditor or

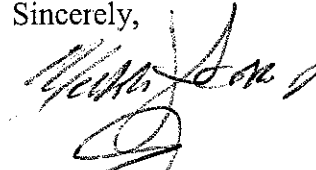
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accountant that they have unlimited access to any and all documentation, at any time, for any reason, or for no reason.

F. Conclusion

For all of the foregoing reasons, MEAM urges the Department to decline to act on the Petition, or in the alternative, to deny the Petition

Sincerely,



Nicholas J. Scobbo, Jr.
Robert M. Granger

Attorneys for the Municipal Electric
Association of Massachusetts

cc: Paul Osborne
A. John Sullivan
John Cope-Flanagan
Julie Howley Westwater
Nicholas Read

APPENDIX

G.L. c.164, §56 Management of plant

Section 56. The mayor of a city, or the selectmen or municipal light board, if any, of a town acquiring a gas or electric plant shall appoint a manager of municipal lighting who shall, under the direction and control of the mayor, selectmen or municipal light board, if any, and subject to this chapter, have full charge of the operation and management of the plant, the manufacture and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts. His compensation and term of office shall be fixed in cities by the city council and in towns by the selectmen or municipal light board, if any; and, before entering upon the performance of his official duties, he shall give bond to the city or town for the faithful performance thereof in a sum and form and with sureties to the satisfaction of the mayor, selectmen or municipal light board, if any, and shall, at the end of each municipal year, render to them such detailed statement of his doings and of the business and financial matters in his charge as the department may prescribe. All moneys payable to or received by the city, town, manager or municipal light board in connection with the operation of the plant, for the sale of gas or electricity or otherwise, shall be paid to the city or town treasurer. All accounts rendered to or kept in the gas or electric plant of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against such plant to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive, of chapter forty-one. The manager shall at any time, when required by the mayor, selectmen, municipal light board, if any, or department, make a statement to such officers of his doings, business, receipts, disbursements, balances, and of the indebtedness of the town in his department.

G.L. c.164, §63 Duties of municipality and its officers; violations; penalties

Section 63. A town manufacturing or selling gas or electricity for lighting shall keep records of its work and doings at its manufacturing station, and in respect to its distributing plant, as may be required by the department. It shall install and maintain apparatus, satisfactory to the department, for the measurement and recording of the output of gas and electricity, and shall sell the same by meter to private consumers when required by the department, and, if required by it, shall measure all gas or electricity consumed by the town. The books, accounts and returns shall be made and kept in a form prescribed by the department, and the accounts shall be closed annually on the last day of the fiscal year of such town, and a balance sheet of that date shall be taken therefrom and included in the return to the department. The mayor, selectmen or municipal light board and manager shall, at any time, on request, submit said books and accounts to the inspection of the department and furnish any statement or information required by it relative to the condition, management and operation of said business. The department shall, in its annual report, describe the operation of the several municipal plants with such detail as may be necessary to disclose the financial condition and results of each plant; and shall state what towns, if any, operating a plant have failed to comply with this chapter, and what towns, if any, are selling gas or electricity with the approval of the department at less than cost. The mayor, or selectmen, or municipal light board, if any, shall annually, on or before such date as the department fixes, make a return to the department, for the preceding fiscal year, signed and sworn to by the mayor, or by a majority of the selectmen or municipal light board, if any, and by the manager, stating the financial condition of said business, the amount of authorized and existing indebtedness, a statement of income and expenses in such detail as the department may require, and a list of its salaried officers and the salary paid to each. The mayor, the selectmen or the municipal light board may direct any additional returns to be made at such time and in such detail as he or they may order. Any officer of a town manufacturing or selling gas or electricity for lighting who, being required by this section to make an annual return to the department, neglects to make such annual return shall, for the first fifteen days or portion thereof during which such neglect continues, forfeit five dollars a day; for the second fifteen days or any portion thereof, ten dollars a day; and for each day thereafter not more than fifteen dollars a day. Any such officer who unreasonably refuses or neglects to make such return shall, in addition thereto, forfeit not more than five hundred dollars. If a return is defective or appears to be erroneous, the department shall notify the officer to amend it within fifteen days. Any such officer who neglects to amend said return within the time specified, when notified to do so, shall forfeit fifteen dollars for each day during which such neglect continues. All forfeitures incurred under this section may be recovered by an information in equity brought in the supreme judicial court by the attorney general, at the relation of the department, and when so recovered shall be paid to the commonwealth.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Petition of the Commonwealth of Massachusetts
Office Of The Inspector General Requesting
An Advisory Ruling by the Department of
Telecommunications and Energy pursuant to
220 C.M.R. §2.08(1)**

D.T.E 06-29

AFFIDAVIT OF ROBERT V. JOLLY

I, Robert V. Jolly, on oath depose and state as follows:

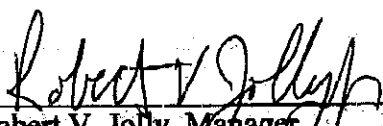
1. I am the manager of the Marblehead Municipal Light Department ("MMLD").
2. I read the letter of Gregory W. Sullivan, Inspector General of the Commonwealth of Massachusetts, to Judith F. Judson, Chairman of the Department of Telecommunications and Energy dated March 13, 2006 requesting an advisory ruling.
3. The Inspector General states that his December 2005 report concludes that the North Attleborough Electric Department ("NAED") misspent \$4,000,000 in bond funds on an unauthorized internet venture. He states that this "situation was exacerbated by what we found to be 'a corporate culture fostered by NAED management that resisted appropriate oversight by other town bodies'". The Inspector General states that he has identified similar problems in five other municipalities including Marblehead.
4. The Inspector General makes it appear that what happened in North Attleborough also happened in Marblehead. That is not the case.

5. The Town of Marblehead has never issued municipal bonds for light department purposes.

6. In 2001, there was a minor disagreement between the MMLD and the Town Accountant regarding reimbursement of certain petty cash expenditures totaling \$58. The Town Accountant did not find these expenditures to be excessive, fraudulent, or unlawful. Initially, he declined to pay them based on a town by-law requiring petty cash receipts. The expenses were for subway tokens, tips and other items for which no receipt was available. Ultimately the MMLD was reimbursed for the expenditures.

7. The Inspector General never conducted any investigation with regard to petty cash reimbursement.

Signed under the pains and penalties of perjury.


Robert V. Jolly, Manager
Marblehead Municipal Light Department

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